

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

STRIDER ROGNIRHAR,

Plaintiff,

v.

TERRY S. SOUTHERN, and  
TIMOTHY ELARIO,

Defendants.

8:08CV51

**MEMORANDUM  
AND ORDER**

Plaintiff, a California prisoner, sued Defendants, who are presumed to be residents of Nebraska. I determined that diversity jurisdiction exists. After Defendants failed to respond, I granted summary judgment for Plaintiff on the question of liability. Under Nebraska law, and based upon Plaintiff's evidence, I decided that Southern, Plaintiff's former girlfriend, breached a contract to keep and use Plaintiff's property while he was incarcerated by giving the property to Elario, who converted it. (Filing [48](#) at CM/ECF pp. 6-7.)

Because Plaintiff's evidence on the quantum of damages was speculative, I offered Plaintiff the opportunity to supplement the record. (*Id.* at CM/ECF p. 8.) I cautioned Plaintiff that he must provide a "reasonably certain factual basis for computation of the probable loss." (*Id.*) (citation omitted.) Plaintiff has now responded. (Filing [51](#) (Plaintiff's Declaration and Memorandum of Points and Authorities) and filing [52](#) (Plaintiff's Index of Evidence).) Ultimately, he seeks \$117,595.77 in damages. (Filing [51](#) at CM/ECF p. 17.)

Despite the additional submission, Plaintiff has failed to give me a sufficient and non-speculative basis to support the amount of his damages. A few examples will suffice to illustrate this point. His assertions that the art work he personally created is worth \$15,000 or that his stamp collections are worth \$3,300 arise out of thin air.

(*Id.* at CM/ECF pp. 15-16.) Still further, Plaintiff's claim that work boots purchased 19 years ago are worth \$115 (*id.* at CM/ECF. p. 15) is patently frivolous. Moreover, Plaintiff's declaration that he is entitled to recover \$85,000.01 (*id.* at CM/ECF. P. 17.) due to his inability to use the converted property falls of its own weight and that is particularly true given that Plaintiff is now, and has been, in prison.

Thus, and while I have granted summary judgment on the basis of liability, I cannot grant summary judgment for damages. The factual predicate for any particular amount of damages is entirely lacking. Since Plaintiff is proceeding pro se, and because he is in prison, I cannot schedule a trial on damages. Accordingly, I shall stay this case until Plaintiff advises me that he has been released from prison and able to try the damage question.

IT IS ORDERED that:

1. Plaintiff's Motion for Summary Judgment (filing [31](#)), to the extent it asserts a claim for damages, is denied.
2. Plaintiff's Motion to Appoint Counsel or an Investigator (filing [49](#)) is denied.
3. Further progression of this case is stayed until Plaintiff advises me that he has been released from prison and he is able to try the damage question.
4. The Clerk shall close this case for statistical purposes.

December 4, 2009.

BY THE COURT:

*Richard G. Kopf*

United States District Judge

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